Committee on Resources

Subcommittee on Energy & Mineral Resources

Statement

PRESENTATION OF ROBERT W. MICSAK
ON BEHALF OF THE WESTERN REGIONAL COUNCIL
AND ANGLOGOLD NORTH AMERICA INC.
TO THE HOUSE COMMITTEE ON RESOURCES,
SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

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I. INTRODUCTION

Chairman Cubin and Members of the Committee, good morning, my name is Bob Micsak. I am Vice President and General Counsel for AngloGold North America Inc. I am here today representing the Cripple Creek & Victor Gold Mining Company in Colorado and the Jerritt Canyon and Big Springs operations in Nevada. I am testifying here today on behalf of the Western Regional Council ("WRC").

WRC is an organization of chief executive officers of about 30 companies representing a cross-section of business and industry in the Western United States, including accounting, agriculture, construction, energy, engineering, financial, manufacturing, mining, utility, and other enterprises. The purpose of WRC is to protect and enhance the quality of life in our region, recognizing the need for both a safe and clean environment and a sound and healthy economy. I also am Chair of the Public Lands Committee for the WRC.

Because we are a gold mining company, my comments and examples will be related to gold production. WRC, however, represents a much wider variety of metals and mineral producers, including copper, coal, molybdenum, zinc, nickel, silver, and lead, among others.

In my limited time, I will briefly cover four areas: (1) fees paid on our Colorado and Nevada operations, (2) Solicitor Leshy's mill site opinion and recently proposed regulations, (3) National Research Council (under the auspices of the National Academy of Sciences, referred to as the "NAS") report and 3809 regulatory changes, and (4) legislative and regulatory uncertainty here in the United States causing an exodus of investment to foreign countries.

II. CLAIM MAINTENANCE FEES

Our Company pays a substantial amount of money to the Bureau of Land Management ("BLM") to maintain our various mining claims. Based on the existing $100 claim maintenance fee, we paid by August 31, 1999 about $350,000 for the mining claims associated with our mining operations in Colorado and Nevada, and about $140,000 for mining claims that are being explored by our Exploration Department in the western

United States. We also staked about 600 mining claims this year and paid a $25 location fee per mining claim totaling about $15,000. All totaled, we paid over $500,000 to BLM to hold these mining claims in 1999.

The BLM noted in a recent *Federal Register* notice that it collected almost $30 million ($29,968,000) for fiscal year 1998 from mining entities for claim maintenance and location fees. These monies were placed into a special fund and Congress appropriated money to BLM to pay for personnel and operations to administer the General Mining Law and 3809 regulations. *See* 64 Fed. Reg. 47023, 47024 (August 27, 1999).

Given the conclusions of the recent National Academy of Sciences/National Research Council report on Hardrock Mining in the United States it is apparent that the $30 million collected by the Department of the Interior is being grossly mismanaged. The mining industry looks forward to the results of a current Government Accounting Office ("GAO") audit of the Department's administration and use of the maintenance and location fees. In light of the impartial third party assessment provided by the NAS panel of experts, we will be surprised if the GAO report does not confirm that the fees are not being effectively used for the administration of the Mining Law as currently required.

We encourage Congress to evaluate the upcoming GAO report in light of the NAS findings, and require the Department to prepare and submit to Congress a plan to implement the findings of the NAS report. Department efforts to tighten the regulatory "screws," either through the regulatory process or through the back door using Secretarial directives and Solicitor's opinions should be forbidden until the agency gets its house in order. I will discuss the NAS report in more depth later in my testimony.

We find that operating on federal lands requires more resources, often due to delays and uncertainties. The much higher costs for conducting exploration and mining operations on federally administered lands start with excessive delays due to an inefficient permitting process and continues throughout the operation with ever changing closure requirements that add needless costs to a project. The entire federal process needs to be streamlined because time delays, and, recently, uncertainties that approvals will be affirmed, significantly increases the risk of doing business with the federal government. For many in the mining industry, it is too much, and they have significantly decreased, if not eliminated, their involvement in the U.S

It is interesting to compare the $30 million collected by the federal government with the decline to $103 million expended on exploration by the gold mining industry in 1998. The reduction of exploration activity has resulted in a reduction in fees received by the federal government as preliminary figures for FY 1999 reflect. The number of new and existing claims dropped because of reduced exploration budgets, and the exploration budgets drop as a result of an inflexible maintenance fee structure. This vicious circle leads one to conclude that if a portion of the $30 million were retained during economic downturns by the industry and invested in exploration activities on federal lands, the gold industry could more effectively combat the decline in domestic employment and mineral security and would also invest in those public lands in a manner that increases the return to the American public.

The Gold Institute reported, based on an economic analysis that the permitting process on federal lands requires, on the average, about four and one-half (4.5) years (Evans, M., 1996, "The Economic Impact of Changes in Tax and Regulatory Policies on Domestic Investment in the Gold Mining Industry and the Effect of those Changes on Production, Employment, and Tax Revenue"). A more recent and updated economic analysis noted a time lag of four (4) to seven (7) years to process a plan of operations and includes as an example the nearly six (6) year process ASARCO, a WRC member company, has

encountered to permit a mine in Montana (Dobra, J. and M. Evans, 1999, "Economic Analysis of Proposed DOI Rulemaking Subpart 3809 - Surface Management" at p. 38 (hereinafter "Dobra & Evans")).

One need look no further than the Crown Jewel Project in Washington as an example of problems mining companies face today when operating on federal lands. In the Crown Jewel example, Congress had to intervene to constrain BLM and the Forest Service from prohibiting operations after they had obtained the necessary approvals. While the existing federal requirements are good in concept, they must be managed efficiently to be effective. Otherwise, these time delays will continue to devastate project economics with essentially no return to the U.S. economy. Colorado, with one of the strongest environmentally protective mining programs in the nation, takes no more than six months to thoroughly involve the public and act on complete mining plans.

III. MILL SITE OPINION AND PROPOSED REGULATIONS

On November 7, 1998, Interior Solicitor John Leshy issued "Limitations on Patenting Millsites Under the Mining Law of 1872" opinion. *See* Interior Solicitor's Opinion M-36988. This opinion attempts to modify over 100 years of settled law by asserting that the General Mining Law's mill site provision at 30 U.S.C. § 42 only allows one five-acre mill site to be located and patented for each lode or placer mining claim. I commend Congress' past intervention in this matter to ensure that the opinion was not improperly applied to the Crown Jewel Project. I also note that Congress again is considering this issue as part of the Department of the Interior's appropriations discussions, as passed by the House during Thursday's vote.

The reason this opinion was issued by Mr. Leshy was to force Mining Law reform. It is Congress' job to make changes to the Mining Law and it is not within the jurisdiction of an appointed individual within a government agency to do so. I am aware that the Subcommittee has heard testimony on this over broad and legally incorrect opinion. For example, R. Timothy McCrum of the Washington, D.C.-based law firm of Crowell & Moring, LLP provided a detailed analysis at the August 3, 1999 hearing on the legally unsupportable nature of this opinion. I strongly encourage you to continue to vote to reject the Leshy's opinion in the event the White House vetoes the Interior Appropriations Bill and the matter comes up for reconsideration by the House.

The BLM also recently proposed regulations that would not only codify Mr. Leshy's opinion but would also apply it in an even more stringent fashion. On August 27, 1999, BLM published its proposal stating that the proposed regulations were to implement changes made by Congress on the collection of claim and maintenance fees. The proposal also was to consolidate in one portion of the CFR the regulations related to location, recording, and maintenance of mining claims or sites. *See* 64 Fed. Reg. 47023. BLM also is using this effort to codify Mr. Leshy's opinion by proposing that "[y]ou may locate more than one mill site, so long as you do not locate more than an aggregate of 5 acres of mill site land for each 20-acre parcel of patented or unpatented placer or lode mining claims associated with that mill site land, regardless of the number of lode or placer claims located in the 20-acre parcel." *See* 64 Fed. Reg. at 47037 (proposed 43 C.F.R. § 3832.32).

BLM asserts as legal authority for the one mill site claim to one mining claim or site Mr. Leshy's opinion and a provision of the General Mining Law (30 U.S.C. § 42). *See* 64 Fed. Reg. at 47028. As noted above, we think this position is untenable. BLM, however, cites no legal support for its further restriction that there be no more than one 5-acre mill site claim for each 20-acre parcel of mining claim or site. This limitation to require a 20-acre parcel of mining claim or site is a further restriction since a mining claim or site that is less than 20-acres in size is barred from having a mill site claim. The reason BLM does not cite legal

support for this acreage proposition is because it, too, is not supported by law.

The WRC urges Congress to enact legislation on this matter not only to bar implementation of Mr. Leshy's unsupported opinion, but also to bar BLM's improper further limitation by requiring mining claims or sites of 20 acres before any mill site claim is determined to be valid.

IV. NAS REPORT AND 3809 REGULATORY CHANGES

Congress authorized the National Academy of Sciences to undertake a study to assess hard rock mining on public lands administered by both the BLM and Forest Service and to determine whether changes were necessary to either agency's land use regulations applicable to hard rock mining found at 43 C.F.R. Subpart 3809 (so called "3809 regulations") for BLM and 36 C.F.R. Part 228 (so called "228 regulations") for Forest Service. The NAS worked at a rapid pace and issued its report "Hardrock Mining on Federal Lands" (hereinafter "NAS Report") on September 29, 1999.

The NAS Report confirms industry's position that the wholesale changes to the 3809 regulations being pursued by BLM are not warranted and that, at most, very discrete and specific changes are needed to the 3809 regulations. The key conclusion advanced by the NAS Report is the need for BLM to properly implement the authorities it presently has in the 3809 regulations. For example, the NAS Report states on pages 5 - 6, that "[i]mprovements in the implementation of the existing regulations provide the greatest opportunity for improving environmental protection and the efficiency of the regulatory process." The full recommendation continues to state:

"Federal land management agencies already have at their disposal an array of statutes and regulations that for the most part assure environmentally responsible resource development, but these tools are unevenly and sometimes inexpertly applied." [NAS Report, p. 93]

The NAS Report then addresses specific examples of how to better implement existing regulations. We suspect that BLM and Forest Service employees who actually have direct responsibilities for and authority over mining operations would agree with this finding. It effectively says "improve the implementation of existing regulations." The NAS Report also finds that "the BLM and the USFS should review the adequacy of staff and resources devoted to regulating mining operations" (ibid).

Based on first-hand experience, we completely agree with this assessment. A review would find, and confirm, the scarcity of individuals within BLM and Forest Service who are experienced in the efficient management of natural resource development particularly in light of the established Congressional intent and directives to mesh mining with other land uses. When we do find those who objectively implement their agencies' legislated mandates, we find them stretched so thin that their work is hindered.

Additionally, the NAS Report recommends very discrete regulatory changes, rather than the proposal advanced by the BLM. The NAS made eight specific recommendations, several of which they identified as regulatory gaps related to streamlining procedures to allow the use of the present system. The recommendations include:

1. Criteria for the modification of plans of operation should be established.

2. The Forest Service should expedite its consideration of permit applications for exploration disturbing less than five acres.

3. Regulations defining temporarily closed mines and requiring interim management plans should be adopted.

4. Financial assurance should be required for the reclamation of all but those mining uses classified as "casual use."

5. Plans of operation should be required for mining and milling operations, other than those classified as "casual use" or "exploration," even if the area disturbed is less than five acres.

6. BLM and Forest Service should plan for and assure the long-term post-closure management of mine sites.

7. The agencies should have authority to issue administrative penalties and clear procedures for referring activities to other agencies for enforcement.

8. Existing environmental laws and regulations should be modified to allow and promote the cleanup of abandoned mines.

The most telling finding of the NAS panel of experts is:

> "Information about current mining activities was even scarcer. The lack of information appeared to be greatest among highly placed officials who have the greatest need to know. Consequently, those responsible for regulatory management and change, and for keeping the public and Congress adequately informed, appear to be severely limited in their ability to do so..."
> (NAS Report, page 75)

This finding should be applied to every issue I have raised today: the mill site opinion, Subpart 3809 revisions, claims information, and administrative delays. In short, this administration is ill-prepared to undertake the expansive regulatory and policy initiatives it has begun.

In light of the $800,000 earmarked by Congress to NAS for this report, and in light of the thoroughness of the assessment, we suggest that BLM be required to implement the recommendations made by the NAS panel rather than allowing BLM to pursue the changes it presently is trying to implement.

V. OVERSEAS EXPLORATION AND MINE DEVELOPMENT

It is not possible to provide a simple or single answer to the question: Do the federal actions being proposed to modify the General Mining Law and revise substantively the 3809 and 228 regulations result in an overseas movement of the mining industry? It is certain that the federal government's consistent attack, both direct and indirect, on the mining industry's operations has taken its toll and is reflected in a reduced level of activity in the United States.

For example, the NAS Committee noted in its report that "[t]he Committee received testimony from senior officers of mining companies as well as other evidence that delays and uncertainties associated with the U.S. regulatory environment are causing mining companies to replace domestic operations with overseas projects, a trend that is already strongly demonstrated in exploration." [p 34, NAS report.] As we all know, a lack of exploration funding results in less development and the export of expertise, jobs, and activities from the United States to other countries.

The Dobra & Evans report also is instructive. This report was provided to BLM as part of comments on the proposed 3809 regulations submitted by the National Mining Association. I would like to request that a copy of the report be put into the record. In the Executive Summary, Dobra & Evans note, with respect to BLM's proposed wholesale changes to the 3809 regulations, that the "BLM ignores its own figures showing that exploration costs could be increased by as much as 38% because of the proposed regulations. In particular, BLM makes no attempt to show how decreased exploration activity now would lead to decreased mining production later. We calculate that the proposed regulations would reduce gold and silver production and employment approximately 20% by 2008." [Dobra & Evans at p.3.]

Dobra & Evans also state "[t]he consequences of the increased costs and time of permitting that would have already occurred are striking in terms of the decrease proportion of worldwide gold mining exploration and development expenditures. These results are shown in Figures 2.1 and 2.2" (page 12) The referenced figures show, since 1997, an approximate 30 percent decrease in allocation of exploration funds and a 93% decrease in allocation of development funds for the United States with a concomitant increase in overseas expenditures. These adverse effects on employment and investment in and returns from U.S. public lands are preceded by declines in exploration such as we are experiencing.

If the mineral resources and recoveries are equal, one may recommend foreign operation rather than domestic. While we still have a better workforce and better technology in the United States, we also have-a more deliberate and persistent effort to continually further restrict mining, whether it be gold mining, copper mining, coal mining, or gravel extraction.

VI. CONCLUSIONS

Restrictions should not be added when they are not demonstrated to be necessary or to substitute for lack of skilled implementation. The uncertainty of future regulatory requirements for operations on federal lands, compounded by the lack of interest of the federal government in "making the process work," has, without question, shifted decisions on new mines and capital investment overseas. It is assumed that the Committee is well aware of the financial and other contributions that mining provides where it is allowed to operate. Given the demands of the industry, that is the skills and care that mines must practice, the demands of geography and commitments to excellence that are required, average wages for miners are about $50,000 per year.

Dr. Evans, whose report we cited earlier in this testimony, reviewed in early 1996, the plethora of tax and regulatory changes that were considered to be on the horizon. Dr. Evans computed that, if the planned changes were implemented, there would be a decline in investment in gold mining alone in the U.S. to $317 million in 2006 from $423 million per year. There would be a concurrent loss in federal revenues of $1.24 billion per year, and a loss to state and local governments of $353 million per year. The U.S. trade deficit would increase by $1.6 billion with the decreased exports of gold.

The more recent proposals by the federal government aggravate the seriousness of this projection.

On behalf of WRC, I would like to thank you for the opportunity to discuss these issues with you today and look forward to answering your questions.

SUPPLEMENTAL SHEET

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SUMMARY OF STATEMENT:

Statement of the Western Regional Council on federal fees for mining, millsite claims and federal regulations ("3809"), and effect on mining industry's United States operations.

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